Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149

REPLY OF U S WEST, INC. TO
OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

U S WEST, Inc. ("U S WEST") hereby submits its reply to the oppositions of AT&T Corp. ("AT&T"), MCI Telecommunications Corporation ("MCI") and the Telecommunications Resellers Association ("TRA") to U S WEST's Petition for Reconsideration.[1] Specifically, we respond to these parties' opposition to U S WEST's position regarding the applicability of the separate-affiliate requirement to a Bell Operating Company's ("BOC") out-of-region provision of interLATA information services.

AT&T,[2] MCI[3] and TRA[4] oppose U S WEST's request that the Federal Communications Commission ("Commission") reconsider its determination that

[1] AT&T filed in opposition Mar. 21, 1997. MCI and TRA filed in opposition Apr. 2, 1997. Petitions for Reconsideration of the Report and Order, filed herein Feb. 20, 1997. In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 5 Comm. Reg. (P&F) 696 (1996) ("Report and Order").

[2] AT&T at 8-9.

[3] MCI at 1-4.

Section 272 requires a BOC to utilize a separate affiliate to provide out-of-region interLATA information services.[5] The arguments of each essentially track the Commission's initial analysis:

- Section 272(a)(2)(C) imposes the separate-affiliate requirement on the BOCs' provision of interLATA information services;
- Section 272(a)(2)(B) applies only to "interLATA telecommunications services;"
- thus, though Section 272(a)(2)(B)(ii) exempts "out-of-region services," from the separate-affiliate requirement, that exemption is limited by the limited scope of Section 272(a)(2)(B) generally;
- therefore, Section 272(a)(2)(B)(ii) exempts out-of-region interLATA telecommunications services, but not interLATA information services from the separate-affiliate requirement.

This chain of logic depends on the conclusion that information services are a form of "interLATA service," but not a form of "interLATA telecommunications service." The Act's definitions of these terms indicate otherwise. An "interLATA service" is --

> telecommunications between a point located in a local access and transport area and a point located outside such area.[6]

The Act does not expressly define "interLATA telecommunications service," but it does define a "telecommunications service" as --

> the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.[7]

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[4] TRA at 8-9.

[5] Report and Order, 5 Comm. Reg. at 727 ¶¶ 85-86.

[6] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act") at § 3(21), 47 U.S.C. § 153(21).

Given these definitions, an "interLATA telecommunications service" is simply the offering of interLATA telecommunications for a fee directly to the public.

In the Report and Order, the Commission determined that "interLATA service" must include information services "because . . . information services are provided via telecommunications."[8] But if that is so, it is equally so when the telecommunications are offered for a fee to the public. In other words, if an interLATA information service is an "interLATA service" it must (if offered to the public for a fee) also be an "interLATA telecommunications service." That could explain why, as U S WEST noted in its Petition for Reconsideration, the exemptions in Section 272(a)(2)(B)(i) include some information services.

Given this, the intent of Congress to exclude information services from the reach of Section 272(a)(2)(B) -- and thus from the exemptions in Section 272(a)(2)(B)(ii) -- becomes far less certain. The uncertainty grows when we consider that Section 272(a)(2)(B)(ii) does not simply exempt "out-of-region services." Rather, it exempts "out-of-region services described in section 271(b)(2)." Each subsection of Section 271(b) (including Section 271(b)(2)) refers to "interLATA services," as does Section 271(a), the general prohibition on the BOCs' provision of such services. That term must have the same meaning in each of those provisions. Thus, if "interLATA services," as it appears in Section 271(a), includes information services, then the term must also include information services when it appears in

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[7] Id. at § 3(46), 47 U.S.C. § 153(46).

[8] Report and Order, 5 Comm. Reg. at 719 ¶ 56 (emphasis in original).

Section 271(b)(2). Thus the "out-of-region services described in section 271(b)(2)" -- which are expressly exempted from the separate-affiliate requirement -- include information services.

Given all this, no one can reasonably conclude that Congress certainly intended not to exempt a BOC's provision of out-of-region interLATA telecommunications services from the separate-affiliate requirement. That is one interpretation of the provision, but it is not the only permissible interpretation, and it is not the most reasonable interpretation.

Section 272(a)(2)(B)(ii) is ambiguous, and we must ask ourselves what Congress might have intended. To the extent the Act imposes a separate-affiliate requirement on a BOC's provision of interLATA information services, it does so solely because of the interLATA component of the service. We know this because the Act permits a BOC to provide information services, as such, with no separate-affiliate requirement, but it imposes such a requirement on a BOC's provision of interLATA services. That is, Congress concluded that a BOC's provision of information services on an integrated basis raises no competitive risks to warrant a separate-affiliate requirement; it reached the opposite conclusion as to most interLATA services.

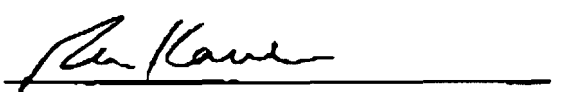
The Act does not require a BOC to utilize a separate affiliate for the provision of out-of-region interLATA telecommunications services. We thus know that Congress believed the provision of these services raises no competitive concerns to warrant a separate-affiliate requirement.

But if Congress believed there was no good reason to impose a separate-affiliate requirement on a BOC's provision of information services, and no good reason to impose such a requirement on a BOC's provision of out-of-region interLATA services, why would it knowingly impose the requirement on a service that combines the two? No party to this proceeding has even suggested why Congress might reach such an incongruous result and none is readily apparent.

Given all this, we believe the Commission should reverse its prior determination, and allow the BOCs to provide out-of-region interLATA information services without meeting the separation requirements of Section 272.

Respectfully submitted,

U S WEST, INC.

By: 

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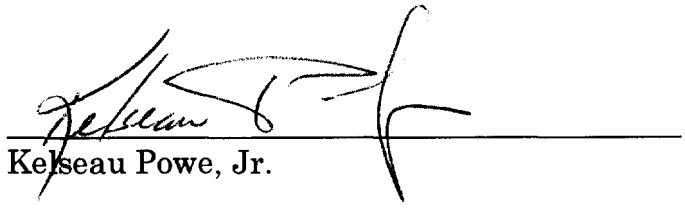
April 16, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 16th day of April, 1997, I have caused a copy of the foregoing **REPLY OF U S WEST, INC. TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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